

### **AMENDMENTS TO THE DRAWINGS**

The attached three sheets of drawing include changes to Figs. 1, 2, 3a, 3b, 3c, and 3d. These sheets, which include Figs. 1, 2, 3a, 3b, 3c, and 3d, replace the original sheets including Figs. 1, 2, 3a, 3b, 3c, and 3d. In Figs. 1, 2, 3a, 3b, 3c, and 3d, descriptive labels have been provided, as well as clearly legible reference numbers. No new matter has been introduced.

Attachment: Three replacement drawing sheets

## **REMARKS**

Claims 11 and 13-20 are pending in the present application after cancellation of claim 12. Claims 11 and 20 have been amended. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Applicants note with appreciation the acknowledgment of the claim for foreign priority and the acknowledgment that certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

### **I. Objection to the Drawings**

In response to the Examiner's objection to the drawings, Applicants are submitting attached replacement drawing sheets which address the objection. Withdrawal of the drawing objection is respectfully requested.

### **II. Objection to the Specification**

In response to the Examiner's objection to the specification, Applicants have amended the specification to address the informalities noted by the Examiner, e.g., amending the Abstract, adding cross-references to related applications, and correcting typographical errors. Withdrawal of the objection is respectfully requested.

### **III. Rejection of Claims 11, 17, and 20 under 35 U.S.C. § 102(e)**

Claims 11, 17, and 20 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,894,606 ("Forbes"). It is respectfully submitted that claims 11, 17, and 20 are not anticipated by Forbes et al. for at least the following reasons.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim element. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary

skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

While Applicants disagree with the rejection, independent claims 11 and 20 have been amended to expedite prosecution of the present application. Amended claim 11 recites, in relevant parts, “performing at least one of providing a warning including driver information and a vehicle intervention as a reaction if a vehicle threatens to leave the traffic lane towards an adjacent lane; determining whether a boundary marking of the at least one boundary of the traffic lane is one of solid or broken; identifying a direction of traffic traveling in the adjacent lane sharing the at least one boundary of the traffic lane; wherein the at least one of the warning and the reaction is a function of both the boundary marking of the at least one boundary of the traffic lane and the direction of traffic traveling in the adjacent lane; and wherein: (a) the at least one of the warning and the reaction is generated if the boundary marking of the at least one boundary of the traffic lane is solid; and (b) the at least one of the warning and the reaction is suppressed if the boundary marking of the at least one boundary of the traffic lane is broken and the direction of traffic traveling in the adjacent lane is in the same direction as the direction of travel of the vehicle.” Independent claim 20 has been amended to recite substantially similar features as the above-recited features of claim 11. The amended language is clearly supported by the Substitute Specification, e.g., at p. 6, l. 7-23. As clearly acknowledged by the Examiner in connection with claim 12 (“the traffic situation in a neighboring lane is not specifically described in the [Forbes] reference”), Forbes does not teach or suggest anything regarding “identifying a direction of traffic traveling in the adjacent lane sharing the at least one boundary of the traffic lane,” let alone that “the at least one of the warning and the reaction is a function of both the boundary marking of the at least one boundary of the traffic lane and the direction of traffic traveling in the adjacent lane.”

For at least the foregoing reasons, Forbes does not anticipate claims 11 and 20, as well as dependent claim 17.

#### **IV. Rejection of Claims 12-16 and 18 under 35 U.S.C. § 103(a)**

Claims 12-16 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,894,606 (“Forbes”) in view of U.S. Patent No. 7,038,577 (“Pawlicki”). At an initial matter, Applicants note that claim 12 has been canceled. In view of the fact that the limitations previously recited in claim 12 have been incorporated into independent claim 11, Applicants will address the combination of Forbes and Pawlicki as applied against claim 11 and its dependent claims 13-16 and 18. Applicants respectfully submit that claims 11, 13-16 and 18 are patentable over the combination of Forbes and Pawlicki for at least the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). In addition, not only must the cited references teach or suggest each element of the claim, but the prior art must also suggest the desirability of combining the elements in the manner contemplated by the claim, and the mere fact that references can be combined or modified does not render the resultant combination obvious. M.P.E.P. § 2143.01 (citing In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990)).

Applicants note that the present application claims priority to German Patent App. No. 102 25 952.6, filed June 11, 2002, and to German Patent App. No. 102 38 215.8, filed August 21, 2002. Both of these priority filings predate the application filing date of Pawlicki (April 30, 2003) and one of the provisional application filing dates (provisional application 60/433,700, filed on December 16, 2002) claimed by Pawlicki. Accordingly, Pawlicki is an effective reference only in so far as the disclosure relied upon by the Examiner

is fully supported in parent provisional application 60/377,524, filed May 3, 2002. *See* MPEP § 2136.03 (III).

Amended claim 11 recites, in relevant parts, “performing at least one of providing a warning including driver information and a vehicle intervention as a reaction if a vehicle threatens to leave the traffic lane towards an adjacent lane; determining whether a boundary marking of the at least one boundary of the traffic lane is one of solid or broken; identifying a direction of traffic traveling in the adjacent lane sharing the at least one boundary of the traffic lane; wherein the at least one of the warning and the reaction is a function of both the boundary marking of the at least one boundary of the traffic lane and the direction of traffic traveling in the adjacent lane; and wherein: (a) the at least one of the warning and the reaction is generated if the boundary marking of the at least one boundary of the traffic lane is solid; and (b) the at least one of the warning and the reaction is suppressed if the boundary marking of the at least one boundary of the traffic lane is broken and the direction of traffic traveling in the adjacent lane is in the same direction as the direction of travel of the vehicle.” Although the Examiner states that “the method taught by Forbes can discern between a solid and dashed boundary line,” there is clearly no suggestion in Forbes of actually “determining whether a boundary marking of the at least one boundary of the traffic lane is one of solid or broken.” Furthermore, although the Examiner contends that the system of Pawlicki “can sense the presence of oncoming traffic and . . . differentiate between type of lane markings,” there is clearly no suggestion in Pawlicki (and/or in Forbes) that “the at least one of the warning and the reaction is a function of both the boundary marking of the at least one boundary of the traffic lane and the direction of traffic traveling in the adjacent lane; and wherein: (a) the at least one of the warning and the reaction is generated if the boundary marking of the at least one boundary of the traffic lane is solid; and (b) the at least one of the warning and the reaction is suppressed if the boundary marking of the at least one boundary of the traffic lane is broken and the direction of traffic traveling in the adjacent lane is in the same direction as the direction of travel of the vehicle.” Even if one assumes for the sake of argument that the Examiner is correct in stating that Pawlicki “can sense the presence of oncoming traffic and . . . differentiate between type of lane markings,” there is simply no suggestion in Pawlicki (and/or in Forbes) that the sensed information regarding the oncoming traffic and the type of lane markings should be used in the manner as presently claimed by the Applicants in amended claim 11.

For at least the foregoing reasons, claim 11 and its dependent claims 13-16 and 18 are patentable over the combination of Forbes and Pawlicki.

**V. Rejection of Claim 19 under 35 U.S.C. § 103(a)**

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,894,606 ("Forbes") in view of U.S. Patent No. 5,673,019 ("Dantoni"). Applicants respectfully submit that claim 19 is patentable over the combination of Forbes and Dantoni for at least the following reasons.

Claim 19 depends from claim 11. As explained above, Forbes does not disclose or suggest all of the features of amended claim 11. Since Dantoni clearly fails to cure the critical deficiencies of Forbes as applied against claim 11, the combination of Forbes and Dantoni does not render obvious claim 11 or its dependent claim 19.

For at least the foregoing reasons, claim 19 is patentable over the combination of Forbes and Dantoni.

**CONCLUSION**

In light of the foregoing, Applicants respectfully submit that all pending claims 11 and 13-20 are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

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